

Thomas Smith
Jasper Robinson and Partners
38 West Campbell Street
Glasgow G2

8th December, 1991

Dear Mr Smith,

Thanks for your letter dated 4th December, 1991. As you say, the matter is not straightforward and I would appreciate clarification on certain points. I confess that in places I find it difficult to grasp the gist of the argument you present and for this reason am obliged to go through the points as I find them. I regret the inconvenience but please bear with me.

You say in the first paragraph that we can now *"enter for judgment immediately against M----- Ltd. and at the same time continue with the action against N-----s. We can proceed against either or both of these two Defenders."* Unfortunately the sense of your opening sentence to the second paragraph then eludes me - I think because of the terms 'both' 'and' 'also' 'alternatively' coming in such rapid proximity - and I remain unsure about what my position here actually amounts to.

You do clarify the position on the *"one-off lump sum"*; I now understand that by accepting this *"higher sum"* I also forfeit *"the right to go back to the Court for further compensation"* should my *"health deteriorate in the future due to (my) exposure to asbestos"*. From this I assume that the *"one-off lump sum"* would be *"higher"* than what I might expect in the form of a successful claim for provisional damages. But not - or not necessarily - higher than a successful claim for provisional damages plus any further compensation that I may successfully claim at a future date. I note that you regard the risk to my future health as *"small"* which I must say gives me some confidence; I was led to believe by the medical evidence that no improvement would occur in my condition, that therefore I should perhaps prepare for deterioration (I have already had one lung removed and the other is contaminated).

I understand that we may *"enter for judgment straightaway against M----- Ltd. on the grounds that they have not submitted a Defence"* and we may perhaps succeed in *"recover[ing] a one-off payment"*. But that *"we cannot obtain provisional damages against M----- Ltd. in this way"*.

Does this mean, if we decide to wait a bit and not seek "*judgment straightaway*" that their Defence can arrive at some future point when we might proceed to claim provisional damages? Is there a time-bar on when a Defence must be offered in these circumstances? Or is it possible to assume - or indeed to hope - that since this company offers no Defence, that they have no Defence?

I further understand that "*if we seek a one-off lump sum from M----- Ltd. then we also have to do the same with N-----s*"; I would appreciate a clarification on this point.

N-----s Ins. Co. Ltd. offers a Defence against our claim but may not be insured, in which case "*we cannot recover provisional damages*". Does this imply, if they are not insured, that there is no hope of a "*one-off lump sum 'to buy off' the risk of any further deterioration in (my) health*"? I.e. if we press on with our claim, and N-----s does prove not to be insured, does this mean any "*one-off lump sum*" we do recover will not be judged on potential provisional damages plus potential further compensation? If so I would appreciate a clarification of the grounds upon which N-----s Ins. Co. Ltd. would feel obliged to offer me a "*one-off final payment*" and the burden of responsibility they could assume in regard to my physical condition.

Can we "*establish the insurance position regarding N-----s*" by asking them directly, or must we discover this by indirect methods? And, if the latter, can this be done in such a way as to expedite our decision as to how we should proceed?

At the top of page 2 you state that "*Basically what this all means is that we can definitely only seek to recover a one-off final payment from M----- Ltd. (and) we cannot recover provisional damages from them.*" Does this mean any "*one-off final payment*" we do recover from M----- Ltd. will not be judged on potential provisional damages plus potential further compensation? Or does it mean something else? And is this '*final payment*' that "*we can definitely only seek to recover*" contingent upon the judgment being entered immediately? Or not?

You state that my "*choice is therefore either to try and preserve (my) right to provisional damages against Newalls and drop the claim against M----- Ltd.*", in which case, given you "*suspect (N-----s) are not insured*", I have no hope of recovering provisional damages and am therefore - as far as I understand you correctly - guaranteed absolutely nothing at all: or else I should "*proceed against M----- Ltd. and N-----s for a one-off lump sum payment*" which - again as far I understand

you - may not take into consideration the full implications of why I am claiming provisional damages in the first place, viz that my symptoms disclose an asbestos-related disease (progressive) and is a direct effect of my exposure to asbestos while employed respectively by the two employers, N-----s Ins. Co. Ltd. and M----- (Insulation) Ltd.

I am aware that my understanding of the argument may be in error and for this reason, rather than discuss matters by telephone, would prefer your written clarification on the points listed above. In light of my failing health it is of course imperative that I arrive swiftly at a decision as to how best we proceed. I therefore ask that you respond at your earliest convenience.

Yours sincerely,

John R. Gilchrist.

George Galloway MP¹
Hillhead, Glasgow

Dear George,

We've just battered out this immediately for you - obviously we could have gone through our listed cases (hundreds) etc. but it's important to get the following to you as an indication of the struggle facing these people. In one sense or another each person still awaits an outcome from the DSS even although there is a supposedly standard procedure where asbestos-related respiratory disease is concerned and for the need for such claims to be dealt both with care and with urgency, and that priority should be given them at all stages - as laid down by their own department some years back. The majority of the men and women referred to are all *confirmed* terminally ill, with the fatal disease mesothelioma which means their mean life expectancy from diagnosis was 6 months.

As you'll appreciate the suspected cases are difficult in terms of using names because some of the people and their families are unaware of the terminal nature of the illness. Any further information on the people and cases can be given by us at once. If you require someone for immediate interview from the names given maybe the best person would be Morrison Wilson, trade unionist and activist all his days. Our files contain many many names of people now deceased who died without receiving their entitlements from the DSS. The DSS proceed in such cases in a similar way to the Defendants in Civil Law claims for compensation, i.e. they proceed along the same lines as the asbestos multinationals and/or their insurers. Many had to undergo biopsies to try and 'prove' they were suffering an asbestos-related disease whereas if they could have afforded to go private they could have purchased a CT scan examination - £300 at Ross Hall; (see enclosed report on this).

As a matter of interest more than 16 people have died in Glasgow since the turn of this year alone. These are just the ones we know about because they are members of our group. One difficulty for this in the struggle is that we are a charity and must be seen to be acting in a non-political manner - you'll have a lot of experience in that direction from your work before becoming an MP.

We also enclose as much relevant material as we have collated and to hand, to allow you more general information. Mike Watson is constituency MP here and does occasional liaison work with us; Jimmy Wray is also interested in what's going on.

Give us a phone if you need anything more.

Yours sincerely,

¹ Various MP's have shown an interest in the plight of asbestos-victims

sept 14th 1992

To the EIS membership

Dear Friends,

Some of you will have seen the BBC2 NEWSNIGHT programme featuring Pat McCrystal, an exshipyard worker who was diagnosed with mesothelioma some seven months ago. Some of you may also have heard of the primary schoolteacher (a woman) who died of the same disease earlier this year. This is a terminal illness that you only get through asbestos exposure. There is no cure. People who catch asbestos-related diseases can only deteriorate; ultimately they will die. Like everybody who worked in the Clydeside shipyards, Pat McCrystal was exposed to asbestos and is one of the 20,000 Clydeside workers who have caught asbestos-related disease.

The authorities acknowledge heavy industry as a high risk area for these industrial diseases but are less inclined to accept that 'white-collar' workers like schoolteachers are also at risk. The death of the woman referred to earlier shows the reality.

The actual statistics on asbestos-related disease among ALL workers amount to a horror story and if you are interested in knowing more about the level of ignorance, of negligence and outright disinformation that has gone on for a long number of years in this country then we would be happy to supply it. Unfortunately a lot of asbestos abuses are still taking place and the authorities are reluctant to acknowledge what in effect is a massive human tragedy, with many workers still being exposed and kept in ignorance of the reality of their working conditions.

This official reluctance is demonstrated by the fight Clydeside Action on Asbestos had to get the authorities (courtesy of the DSS) to admit that the woman caught the disease while working as a schoolteacher. But the evidence put forward by C.A.A. was overwhelming, based on research and information gathered from throughout the world. It's important to be aware that many people working in public buildings, especially schools are at risk. Recent press reports have highlighted the cases of many schools, particularly in the Glasgow area, containing asbestos materials which pose a high risk to staff and pupils alike. Already many school staff will have died of asbestos-related diseases, even though they have not been diagnosed as such.

When Pat was diagnosed with mesothelioma a few months ago he was given a life expectancy of 4 months. But Pat McCrystal is not only a straight, honest guy he is also a hell of a fighter. He is still fighting, and still coming into Clydeside Action on Asbestos at least once a week, hoping his experience will be of support and help to other victims. On the 24th September his civil claim is scheduled to be heard at Edinburgh High Court and he is prepared to go through with this because of the emotional and moral support this must give to other victims.

Pat feels angry and he feels cheated, exactly the same response as anyone else. Had he known of the dangers, like a great many other workers, then he would have fought against them. And Pat also feels it personally - rightly or wrongly - because for many many years he trained apprentices on the Clyde and regards it as a failure of his that he was ignorant of what these hundreds of young men were facing. But information on health and safety is never easy to get, not then and not now.

The hard truth is that on average about three members of Clydeside Action on Asbestos dies each month as a direct effect of asbestos disease.

All EIS members can support Pat McCrystal and all the other men and women who have caught asbestos-related disease. One way is straightforward, to support and take an interest in the work we do at Clydeside Action on Asbestos. We ask that as many EIS members as possible join the group. It only costs a £1 for a year's subscription. We must support these victims; on behalf of the dead and their families, and on behalf of those who are sick and dying. We have to fight to get asbestos banned so there won't be any more victims. If we had fought for this properly in the past the tragedy might have been avoided and these thousands of workers and their families wouldn't have had to undergo such terrible pain and suffering.

Recently we've been getting support from a variety of people, from school teachers to miners, from print workers to firemen and shipyard workers. And officially some unions are now beginning to recognise the struggle. You may be aware of a recent letter to this effect from Campbell Christie. We're now in the process of issuing THE ASBESTOS CHARTER, calling for a Global Ban.

Remember this: Clydeside Action on Asbestos gets almost no financial support from any official body. We only manage to survive through donations by victims and sympathisers. Nobody who does any of the essential day-to-day work gets paid a penny. We're all volunteers, victims and non-victims alike. The support of EIS

members would give a great boost to everybody. But more important than the £1 from each new member is the moral support; knowing that the work we do is being recognised by the people that count, the actual workers themselves.

Members from the group (victims and non-victims) would be happy to go along and talk about the sort of support and counselling work we do, and also let you know about the full implications of the schoolteacher's posthumous claim found in favour by the Social Security Appeals Tribunal.

Every trade unionist should know the reality of this struggle. Every member should show their support. We look forward to hearing from you.

All the best

James Harkins
SSBA
Paisley Road West
G51

Sept.1992

Dear Jim,

For your information and that of your department I enclose copies of two recent communications.

We are unable to cope with the workload relating to DSS benefits and allowances on asbestos-related industrial diseases. To be blunt about it we are mentally and physically exhausted, acutely undermanned while at the same preoccupied by the struggle to maintain our financial and material resources. It is also very difficult and emotionally stressful to supply the back-up to people that we know are dying of these diseases but through the bureaucratic/diagnostic procedures are denied or obstructed benefits and allowances. These terms are I admit evaluative. What I am prepared to submit is that in the past 10 months or so, of the cases I have been involved with, perhaps only 1% have been on behalf of a person that I suspected might have been fortunate enough not to be suffering from an asbestos-related disease. In other words I am saying that 99% of rejected claims (posthumous and otherwise) are in respect of people who are certain victims of asbestos.

We have called for an Emergency General Meeting of our membership to inform them of the position. I feel that you should be aware of the situation.

Yours sincerely,

March, 1992

James Harkins Esq
SSBA
Murray House
Murray Road
East Kilbride

Dear Jim,

The following is a list of several members of this group who for one reason or another are still awaiting an outcome on their individual claims, given the procedure on priority where asbestos-related disease is concerned. Many are confirmed and the others strongly suspected terminally ill, with the fatal disease mesothelioma which means their mean life expectancy - from diagnosis - was 6 months if male (9 months for females) .

As you'll appreciate the suspected cases are difficult in our personal dealings with the individuals and their families, because of the terminal nature of the illness. Some of them had to undergo biopsies, risking metastasis, simply to 'prove' that on a balance of probabilities, they were suffering asbestos-related disease whereas if they could have afforded to go private they could have purchased a CT scan examination (£300 at Ross Hall). Our members believe that biopsies can often effect mesothelioma.

This information is being given to the prospective MP's of the constituencies of the above-named, and also to the MP's who attended the Notice of Motion No. 742, on Compensation for Asbestosis Victims and their Families heard the last Parliament, 26.2.92. Around 16 of our members have died since the turn of the year. Any further information on the people and cases can be given by us at once.

Is there any update on the position of Starthclyde Region in relation to the now posthumous claim on behalf of [case 33]? Or should we contact the particular office for that information?

Yours sincerely,

- 1
Claimant's Ref: LM -----
Name of claimant: James ----- (confirmed)
Address: Dalmuir, Clydebank.
- 2
Ref: RB -----
Mrs A---- C----- (diagnosed by one rejected by another)
Parkhouse, Glasgow
- 3
Ref: KW 03 55 20 B
Patrick John McCrystal (confirmed by hospital not by DSS)
238 Langlands Road, Glasgow G51 4AQ
- 4
Ref: ZI -----
Mrs A----- F----- (suspected)
North Drumry, Clydebank.
- 5
Ref: AB -----
Philip ----- (confirmed)
Whitehill, Hamilton.
- 6
Ref:ZY -----
Angus ----- (confirmed)
Glasgow G52
- 7
Ref: AY -----
John ----- (confirmed)
Dalmuir West.
- 8
Ref:RA-----
William ----- (suspected)
Cumbernauld. G68
- 9
Ref: -----
A. ----- (confirmed)
Glasgow, G33

- 10 Ref: ZW -----
 David ---- (suspected)
 Glasgow G32
- 11 Ref: HA -----
 Duncan ----- (suspected)
 Wyndford, Glasgow G20
- 12 Ref: YR -----
 James ----- (suspected)
 Barmulloch, Glasgow.
- 13 Ref: YL -----
 Brian ----- (suspected, lung already removed)
 Glasgow G64
- 14 Ref: -----
 William ----- (suspected, lung already removed)
 Larkhall.
- 15 Ref: RE -----
 M. W----- (confirmed)
 nr Balloch
- 17 Ref: -----
 David ----- (confirmed)
 Clydebank